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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

BUDGET AND ADMINISTRATION COMMITTEE

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SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Jose Medina, Chairperson

Linda Moulton-Patterson

Michael Paparian

STAFF

Mark Leary, Executive Director

Kathryn Tobias, General Counsel

Marie Carter, Staff Counsel

Terry Jordan, Deputy Director

Martha Gildart, Supervising Waste Management Engineer

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1 PROCEEDINGS

2 CHAIRPERSON MEDINA: Good morning. And welcome
3 to the Budget and Administration Committee. Today is
4 Wednesday, June the 12th, 2002.

5 And the members of this Committee are Chair,
6 Linda Moulton-Patterson, who's on her way here, and Board
7 Member Paparian.

8 And I'd like to inform the audience, if you would
9 please turn off any pagers or cell phones, speakers.
10 Slips are in the back of the room. And if you wish to
11 speak today, please hand them in to my left to Deborah
12 McKee.

13 And with that, if you would call the roll,
14 please.

15 SECRETARY HARRIS: Paparian?

16 COMMITTEE MEMBER PAPARIAN: Here.

17 SECRETARY HARRIS: Medina?

18 BOARD MEMBER MEDINA: Here.

19 SECRETARY HARRIS: Moulton-Patterson?

20 CHAIRPERSON MEDINA: And she's on her way.

21 And if we can begin with the Deputy Director's
22 report, please.

23 DEPUTY DIRECTOR JORDAN: Certainly. Good
24 morning, Chairman Medina, Committee Members.

25 I'm Terry Jordan with the Administration and

1 Finance Division.

2 This morning I'd like to give you a hopefully
3 short Deputy's report. I don't want to linger here.

4 I'd like to provide you with a budget update.

5 Obviously, the unveiling of the Governor's May Revise
6 announced a budget deficit to be approximately \$24
7 billion. This was close to \$8 billion more than they had
8 anticipated originally.

9 Certainly, drastic measures are being considered
10 to address the deficit. And those that affect the
11 Integrated Waste Management Board include obviously the
12 hiring freeze. We are all under the hiring freeze. The
13 update to that is that the only thing allowed under the
14 process -- because we recently have been advised that
15 there's a more stringent hiring freeze -- they're no
16 longer considering exemptions, with the exception that
17 you're able to reflect excessive revenues would be lost in
18 the multibillion dollars or that there's a real peril to
19 health and life and safety.

20 CHAIRPERSON MEDINA: That sounds like all three
21 of our positions.

22 DEPUTY DIRECTOR JORDAN: Certainly we feel that
23 way.

24 So, therefore, what this Board can do currently
25 under those restrictions is allow the hiring of surplus

1 candidates as throwaway candidates, which is those
2 agencies that are looking at laying off with them on this
3 list. And so if they can be picked up elsewhere within
4 State government, that's allowable.

5 Transfers of staff within the Board, the same or
6 comparable salary level. However, that becomes more and
7 more difficult when you look at having so many vacancies
8 and having the mandates that we have. And allowing staff
9 to transfer around does become difficult when you have to
10 meet those mandates. So we have to be very careful in
11 that area.

12 In addition, we were advised by Cal EPA that
13 effective May 31st the Governor's office has revoked all
14 previously approved exemptions for positions that were
15 still vacant on that date. And that includes the three
16 CEA vacancies that we have been discussing and some other
17 program staff.

18 But, however, I am continuing to seek clarity,
19 simply because I want to make sure that there are no -- or
20 that there's a possibility that maybe there might be some
21 flexibility. So I continue to seek that.

22 We recently received a budget letter from the
23 Department of Finance with regards to what the Governor
24 referred to in the May Revise as his desire to reduce
25 State government's positions and dollars. And this is

1 regardless of funds. And there's approximately 4,000
2 State employee positions that the Governor is looking to
3 reduce. And we're currently working through that process
4 and working with the agency, as it has been delegated to
5 each agency to work with their boards and departments to
6 fulfill that submission of a plan by July 1st. So we'll
7 keep you apprised of that.

8 You've also -- in fact, signing -- I believe on
9 Monday. That was with regards to clarity surrounding the
10 recent management memo on the contracting and procurement
11 restrictions.

12 And last, but not least, I wanted to give you an
13 update on how we faired at least through conference in the
14 Legislature. Obviously, there's some more work to be
15 done. And the Governor will have to sign the budget to
16 make it final.

17 Through conference -- through the Assembly and
18 Legislative hearing -- or Senate hearings and then through
19 conference, our budget remained the same, \$117 million, as
20 proposed in the Governor's budget, with the exception that
21 our energy or conversion technologies, BCP, for 1.5
22 million, was deleted from our budget.

23 However, we remain hopeful that the legislative
24 session will be successful in producing a bill that will
25 reestablish appropriation authority for this program. So

1 we continue to watch for that.

2 Finally, in the event that the fiscal year --
3 upcoming fiscal year, 2002 and 3, budget is not finalized
4 timely, I would encourage and apprise you that we need to
5 be careful of our travel and expenditures in a time where
6 there is not a budget, simply because we cannot pay
7 vendors, we cannot reimburse staff when there is no
8 budget. We do have a revolving fund, but it's very
9 limited. And, at this point in time, we have still yet
10 current ongoing expenditures that are being sought through
11 that process, including travel.

12 So I just wanted to apprise you of that.

13 With that, that's my conclusion.

14 Any questions?

15 CHAIRPERSON MEDINA: Okay. Thank you, Ms.
16 Jordan.

17 Board members, any questions on any of these
18 items?

19 If no questions, then we will proceed with the
20 next item on the agenda.

21 ASSISTANT DIRECTOR PACKARD: Thank you, Mr.
22 Medina.

23 Rubia Packard with the Policy Office.

24 I'm here to present Agenda Item 51, consideration
25 of the scope of work to assess methods to increase public

1 and community participation in Board processes. And this
2 was Contract Concept Number 39 out of the Integrated Waste
3 Management account for Fiscal Year 2001-2002.

4 This item requests consideration of the scope of
5 work to assess methods to increase public and community
6 participation in Board processes.

7 The scope of work is Attachment 1 to Agenda Item
8 51.

9 This contract will provide the Board with
10 recommendations on how the Board may effectively increase
11 participation of community-based groups in the groups'
12 activities, grants and processes.

13 It will focus on identification of key
14 community-based groups, increasing effective communication
15 with identified community-based groups, and successful
16 marketing of the Board's programs and activities to
17 increase public participation and to assist us in
18 addressing the issues of environmental justice.

19 The contract concept was approved by the Board at
20 its December 2001 Board meeting in the amount of \$100,000
21 from the Integrated Waste Management account.

22 The scope of work was reviewed through the
23 Board's internal review and comment process. And I can
24 review the scope of work briefly for you.

25 As I said already, some of the tools that this

1 contract will provide through the contractor are
2 coordinating presentations on environmental priorities and
3 concerns related to the Board's programs and activities
4 from community-based environmental organizations at Board
5 meetings throughout the coming year.

6 The contractor will be examining methods to
7 increase effective communication between those groups and
8 the Board, and then examining and presenting to the Board
9 methods to successfully market the Board's programs. And
10 also an important part of the contract is a best-practices
11 study that will include a summary and analysis of
12 effective outreach community relations and communication
13 strategies that have been used by other organizations,
14 federal, state and local, that we can apply to our
15 programs.

16 And then of course the final report will
17 summarize all of that and present some hopefully effective
18 approaches to how we can address our communication and our
19 outreach and begin to address some of the environmental
20 justice issues that we're going to be faced with.

21 The options for the Board --

22 CHAIRPERSON MEDINA: Excuse me just -- okay, go
23 ahead, please.

24 ASSISTANT DIRECTOR PACKARD: The options for the
25 Board include, Number 1, approve the proposed scope of

1 work; Number 2, approve the proposed scope of work with
2 specific revisions; or, 3, disapprove the scope of work.

3 Staff recommend Option 1, that the Board approve
4 the proposed scope of work and adopt Resolution 2002-294.

5 I'd be happy to answer any questions.

6 CHAIRPERSON MEDINA: Very good.

7 This is indeed a very worthwhile project.

8 Environmental justice is very important to this Board.

9 And Board Member Patterson, did you wish to ask a
10 question?

11 COMMITTEE MEMBER MOULTON-PATTERSON: Yes. I just
12 wanted to say that -- well, first to comment that anything
13 that can increase our community participation and get
14 community concerns out there I am heartily in favor of.
15 And I would hope we'd be working with Ramel Pasquel and
16 Cal EPA on this and -- because they've done some excellent
17 work with community groups.

18 ASSISTANT DIRECTOR PACKARD: We've been working
19 very closely on this. They have had a big hand in this
20 and helping identify what can be done, et cetera. And
21 they will continue to be involved in this. In fact,
22 Melinda is here in case we had any questions about the Cal
23 EPA side of it.

24 COMMITTEE MEMBER MOULTON-PATTERSON: I see Ramel
25 out there also.

1 ASSISTANT DIRECTOR PACKARD: Ramel is here, too.

2 COMMITTEE MEMBER MOULTON-PATTERSON: Thank you.

3 And I would just, you know, certainly vote to put it on
4 consent or however we were doing that these days.

5 CHAIRPERSON MEDINA: Yes.

6 Board Member Paparian wishes to say a few words
7 on this item since he's invested some time in it.

8 Board Member Paparian.

9 COMMITTEE MEMBER PAPARIAN: Thank you, Mr. Chair.

10 I especially wanted to thank Rubia for all her
11 hard work on this and her work with my staff in putting
12 this together. I think it's an excellent proposal that's
13 benefited from a variety of input from around the staff
14 and elsewhere.

15 I wanted to mention just a couple things about
16 the intent. There have been some stakeholders who've had
17 concerns with this issue. And it's not the intent that
18 this item result in changes to the permitting or siting
19 process or mess with the jurisdictions of the Board or
20 local governments, but rather it's the intent to take some
21 baby steps towards the environmental justice issue and
22 gather information directly from the impacted communities
23 regarding those issues that they feel are important.

24 This strategic plan incorporates environmental
25 justice as a major priority. But it's not yet clear what

1 the Board intends to do about the issue. This item will
2 help the Board face the issue and frame the issue and
3 allow some dialogue with communities about their concerns
4 with environmental justice.

5 I wanted to also just thank Ramel. And I know
6 that he is very interested in this and I believe will be
7 actively engaged in what happens with this proposal.

8 CHAIRPERSON MEDINA: Okay. Thank you, Board
9 Member Paparian.

10 If there is anyone in the audience that wishes to
11 speak on this item, you may do so now. Do we have anyone
12 that wishes to speak on this?

13 If not, we will move on to a vote.

14 Is there a motion on this?

15 COMMITTEE MEMBER PAPARIAN: I'll move 2002-294.

16 COMMITTEE MEMBER MOULTON-PATTERSON: Second.

17 CHAIRPERSON MEDINA: Resolution 2002-294 has been
18 moved. And this would go on fiscal consent.

19 If you would call the roll, please.

20 COMMITTEE MEMBER PAPARIAN: I think this one
21 would actually be consent. This isn't a money item. The
22 next item would be fiscal, I believe.

23 CHAIRPERSON MEDINA: If this is Resolution
24 2002-294, it has \$100,000 in it.

25 DEPUTY DIRECTOR JORDAN: It is only the scope.

1 CHAIRPERSON MEDINA: This is only the scope?

2 The award item, which is -- which is 52, is what
3 you would want to vote whether to put on Committee
4 consensus.

5 CHAIRPERSON MEDINA: Very good then.

6 Call the roll on this, please.

7 SECRETARY HARRIS: Moulton-Patterson?

8 COMMITTEE MEMBER MOULTON-PATTERSON: Aye.

9 SECRETARY HARRIS: Paparian?

10 COMMITTEE MEMBER PAPARIAN: Aye.

11 SECRETARY HARRIS: Medina?

12 CHAIRPERSON MEDINA: Aye.

13 With that, we'll move on to Item Number 52.

14 ASSISTANT DIRECTOR PACKARD: Thank you, Mr.

15 Medina.

16 Agenda Item 52 is consideration of the University
17 of California, Santa Cruz, as contractor to assess methods
18 to increase public and community participation in Board
19 processes. Again, this was Contract Concept Number 39
20 from the Integrated Waste Management account for Fiscal
21 Year 2001-2002.

22 This agenda item requests approval of the
23 University of California, Santa Cruz, as the contractor
24 for the contract and scope of work presented in Agenda
25 Item 51.

1 The amount of the contract is \$100,000, which was
2 approved and allocated by the Board in its December 2001
3 Board meeting.

4 I won't go through the scope of work again. But
5 I can if you have any other questions.

6 This contract provides the Board with the
7 opportunity to hear directly at Board meetings in a public
8 setting from a variety of community-based groups regarding
9 issues that are important to them.

10 The contractor will work with these groups to
11 coordinate the presentations in a cohesive and organized
12 fashion. They will include input from the groups on a
13 variety of issues relative to the Board's work, including
14 how they believe the Board can best communicate and
15 outreach to interested communities.

16 One of the reasons that this agenda item was set
17 up in this -- not the agenda item, excuse me -- but the
18 scope of work was set up the way that it was, it was in an
19 order that the Board be allowed to hear directly from
20 these groups and an order to let the Board establish
21 contact and to report a relationship with its
22 community-based groups regarding outreach, EJ concerns, et
23 cetera.

24 UC Santa Cruz was selected as the contractor
25 because that is where the Center for Justice, Tolerance

1 and Community is located. Dr. Manwell Pastor, which is a
2 name that you've heard before in previous environmental
3 justice studies, and Rachel Rossner, who assisted him with
4 one major study that the Board has seen before, are the
5 contractors for this contract.

6 The Center itself focuses on issues of social and
7 economic justice, dialogues across diversity, and the
8 building of collaborative communities.

9 Their emphasis is on public dissemination of
10 study and research findings and active engagement with
11 affected communities.

12 In the two and of years since it was set up the
13 Center has established partnerships to work on these types
14 of issues with numerous community and research groups.
15 And we have provided you with a handout that lays out some
16 of their previous work and studies and their
17 qualifications.

18 The options for the Board for this agenda item
19 are, Number 1, approve the University of California, Santa
20 Cruz, as contractor for this contract; or, Number 2,
21 disapprove the University of California, Santa Cruz, as
22 the contractor for this contract.

23 Staff recommend Option 1, approve the University
24 of California, Santa Cruz, as the contractor for this
25 contract and adopt Resolution 2002-295.

1 CHAIRPERSON MEDINA: Thank you very much.

2 Board Members, any questions in regard to this
3 item?

4 COMMITTEE MEMBER PAPARIAN: Just one, Mr.
5 Chairman.

6 I just wanted to mention a situation that I face.
7 I am an alumni of UC Santa Cruz and treasurer of the local
8 chapter of the Alumni Association. I've actually
9 consulted with legal counsel about whether this presents
10 any type of conflict of interest. And although it appears
11 that it does not present any type of conflict of interest,
12 I am going to abstain from voting on this item just to be
13 extra squeaky clean.

14 CHAIRPERSON MEDINA: Thank you, Mr. Paparian.

15 And that's very admirable. And --

16 COMMITTEE MEMBER MOULTON-PATTERSON: Do I have to
17 abstain from anything to do with UC Berkeley?

18 COMMITTEE MEMBER PAPARIAN: The issue for me,
19 Madam Chair, was that I am the treasurer and sign checks
20 on behalf of the Alumni Association.

21 CHAIRPERSON MEDINA: Okay. We're all alumni of
22 the UC system, but Mr. Paparian of the local chapter of UC
23 Santa Cruz.

24 We still have a quorum on this. And certainly
25 the UC Santa Cruz Center for Justice, Tolerance, and

1 Community has been at the forefront of civil rights,
2 social justice, and environmental issues for a long time.
3 This is certainly a project worthy of consideration. Mr.
4 Pastor is certainly very much recognized and has been
5 published in regard to issues around environmental
6 justice. So we support this very strongly.

7 And if we can have a motion on this.

8 COMMITTEE MEMBER MOULTON-PATTERSON: I'll move to
9 approve this item, Resolution 2002-295.

10 CHAIRPERSON MEDINA: And I will second that.

11 And if we can have a roll call on this, please.

12 SECRETARY HARRIS: Moulton-Patterson?

13 COMMITTEE MEMBER MOULTON-PATTERSON: Aye.

14 SECRETARY HARRIS: Paparian?

15 COMMITTEE MEMBER PAPARIAN: Abstain.

16 SECRETARY HARRIS: Medina?

17 CHAIRPERSON MEDINA: Aye.

18 And this Resolution 2002-295 will move to fiscal
19 consent before the full Board.

20 And if we could have the next item, please.

21 ASSISTANT DIRECTOR PACKARD: Thank you, Mr.
22 Medina. Rubia Packard again from the Policy Office.

23 I'm here to present Agenda Item 53, which is
24 consideration of grant eligibility and qualifying
25 requirements for permits and other specialized licenses.

1 And there's parts of this that get a little
2 murky, a little complex. So we went ahead and prepared a
3 PowerPoint presentation, some slides for you just to
4 outline it a little bit and help us get through it without
5 too much confusion. I've been working on it with the
6 legal office and the programs and admin and finance for
7 several weeks, and I still get confused reading it. So
8 we'll work through it, and hopefully the slides will help
9 a little bit.

10 --o0o--

11 ASSISTANT DIRECTOR PACKARD: This item has been
12 prepared for the purpose of improving Board grant programs
13 and processes where it's needed, and to ensure that those
14 processes are effective and consistent.

15 It's also been prepared to respond to Assembly
16 Budget Subcommittee Number 3, which requested that the
17 Board submit a report to the Legislature on or before
18 December 1, 2002, on our grant programs, which one
19 requires verification of permits and licenses, how we
20 verify compliance with permits and licenses, and some of
21 the impacts on the Board depending upon how we handle that
22 compliance with permits and licenses in our grants
23 programs.

24 So this agenda item is intended for the Board to
25 consider how they -- what policy they want to adopt

1 relative to how we handle those permits and licenses. And
2 then the material developed through this item will be used
3 as a basis for preparing the legislative report that's due
4 in December.

5 --o0o--

6 ASSISTANT DIRECTOR PACKARD: Key issues that we
7 need to discuss with you today are, Number 1, whether full
8 compliance with all permits and licenses should be a grant
9 application eligibility requirement; or whether the Board
10 should conditionally award grants subject to compliance
11 verification, with a provision for after-award compliance.

12 And, second, whether submission to the Board of
13 documentation evidencing compliance should be an
14 additional verification requirement.

15 And we'll break these down for you a little bit.

16 --o0o--

17 ASSISTANT DIRECTOR PACKARD: Just a little bit of
18 background on the grant program. I was pretty impressed
19 with this number myself. From Fiscal Year '95/'96 to the
20 present the Board has successfully awarded more than \$171
21 million in grants.

22 Again, we're taking a look at our process to make
23 sure that it's -- that we can improve it where necessary
24 and also provide consistency where it's needed.

25 The Board currently has 17 grant programs.

1 Thirteen of those are available only to governmental
2 entities, and four are available to private entities.

3 These grants -- these 17 grants are listed in
4 Attachment 1 of this agenda item so that you can see
5 what -- all the individual ones and there's a short
6 description of each grant program.

7 --o0o--

8 ASSISTANT DIRECTOR PACKARD: Our current Board
9 practice is out of these 17 -- the 17 current programs, we
10 have a grant manager that's assigned to every grant and
11 the grant manager monitors the grant, assures that the
12 funds are paid only where it's appropriate. With the
13 exception of entitlement grants, all grants are -- funds
14 are paid in arrears; that is, after the activity or
15 project being funded is complete.

16 Board grant programs vary in the way that we
17 address permit and license compliance. And currently we
18 have no adopted Board policy addressing how permits and
19 licenses must be obtained or how they must be verified
20 across all the programs. Within each of the individual
21 grants, when application or eligibility criteria adopted,
22 there has been some Board correction for individual
23 grants. But there is no comprehensive policy, and that's
24 what we were hoping to get to today.

25 --o0o--

1 ASSISTANT DIRECTOR PACKARD: All Board grant
2 programs require that the applicant certify under penalty
3 of perjury that the information provided in the
4 application is true and correct.

5 And where applicable, Board staff verify
6 compliance with Board permits.

7 All grant agreements include compliance related
8 provisions.

9 --o0o--

10 ASSISTANT DIRECTOR PACKARD: Failure to comply
11 with the compliance provisions in our grant agreements
12 would be a contractual breach that could result in
13 nonpayment of grant funds, reimbursement of the grantee of
14 funds paid -- reimbursement by the grantee -- excuse me --
15 termination of the grant, and placing the grantee on the
16 Board's unreliable contractors' list.

17 So we feel that the language that we use has some
18 pretty strong consequences if they don't comply with what
19 they're required to comply with.

20 --o0o--

21 ASSISTANT DIRECTOR PACKARD: So we'll break down
22 the two issue areas that we are hoping for Board
23 consideration today.

24 The first issue is whether full compliance with
25 all permits and grants should be an application

1 eligibility requirement; or whether the Board should
2 conditionally award grants subject to compliance
3 verification, with a provision for after-award compliance.

4 And there's two options that we want to discuss
5 under this issue.

6 --o0o--

7 ASSISTANT DIRECTOR PACKARD: Option 1 would be to
8 make compliance an application eligibility requirement;
9 meaning that they would have to comply with all permits
10 and licenses at the time of the application in order to be
11 eligible.

12 If they don't obtain all of those permits and
13 licenses in advance, the application could not be
14 considered. They would not even be eligible to apply.

15 CHAIRPERSON MEDINA: Yes, Board Member
16 Moulton-Patterson, did you have a question?

17 COMMITTEE MEMBER MOULTON-PATTERSON: Yes, I did.
18 Thank you.

19 Rubia, isn't it true that in some cases they
20 can't get certain permits until after it's been granted?

21 ASSISTANT DIRECTOR PACKARD: Yes, that's true.
22 And we have built that into the options. And we'll talk
23 about that a little bit more a little bit later in the
24 agenda item. But that is very true and that's one of
25 reasons why we've structured our recommendations the way

1 that we have, to provide the Board with flexibility where
2 they can't get certain permits until after a -- for
3 example, a project is already constructed. Then they go
4 back and get permits to -- because they can then show that
5 the project works the way it's supposed to.

6 So, yeah, we have built that in.

7 COMMITTEE MEMBER MOULTON-PATTERSON: Thank you.

8 ASSISTANT DIRECTOR PACKARD: Okay.

9 So again, Issue 1, Option 1 is to make compliance
10 an application eligibility requirement.

11 --o0o--

12 ASSISTANT DIRECTOR PACKARD: Some of the reasons
13 to make that an eligibility requirement: It would ensure
14 that all applicants are immediately ready and able to
15 perform the grant; only the most serious and responsible
16 applicants would apply for the grant because they would
17 have to go through all of the time and expense of getting
18 all permits and licenses in advance; and it, of course,
19 eliminates the possibility that we would be granting money
20 and they have not been able to obtain the necessary
21 permits and licenses.

22 --o0o--

23 ASSISTANT DIRECTOR PACKARD: The down sides are:
24 Because of application deadlines, an applicant may not
25 have enough time to obtain all the permits and licenses

1 before filing the application; some applicants may not be
2 willing or able to incur costs associated with obtaining
3 all permits and licenses before they know for sure that
4 they're getting a grant.

5 --o0o--

6 ASSISTANT DIRECTOR PACKARD: Requiring full
7 compliance at time of application could narrow the
8 applicant pool and then make the grant process less
9 competitive.

10 And as Linda Moulton-Patterson just indicated,
11 some permits and licenses can't be issued until the
12 project has started already or has been completed. For
13 example, certain air district permits cannot be issued
14 until the project is complete and the testing has been
15 done.

16 --o0o--

17 ASSISTANT DIRECTOR PACKARD: So that's Option 1
18 under Issue 1.

19 Option 2 is to make verification of compliance a
20 condition of the grant award rather than application, and
21 then provide for after-award compliance for those cases
22 where permits and licenses can't be issued until the
23 project has commenced or has been completed.

24 --o0o--

25 ASSISTANT DIRECTOR PACKARD: This is where it

1 gets a little possibly confusing. This option has two
2 parts.

3 As an additional condition of the grant award,
4 the proposed grantee would be required to attest to the
5 certification of compliance under penalty of perjury that
6 the Board is requesting.

7 After-award compliance would be tied to payment
8 of funds.

9 --o0o--

10 ASSISTANT DIRECTOR PACKARD: So for Issue 1,
11 Option 2, Part 1, as a condition of the award the Board
12 current condition -- conditionally awards all grants
13 subject to a couple of requirements. One, is that they
14 return the signed grant agreement; and, two, is that they
15 pay all outstanding debts owed to the Board within 90 days
16 from the date they receive the grant agreement.

17 If those conditions aren't met, the grant is not
18 awarded.

19 We're proposing to provide -- or include an
20 additional condition on the grant award in this option
21 that would require them to attest to the following
22 language, which is on the next slide.

23 --o0o--

24 ASSISTANT DIRECTOR PACKARD: And there's two
25 different sets of wording. One is for public entities and

1 one is for private entities.

2 And the only difference between the two: For
3 private entities, Number 1, is in good standing and
4 qualified to do business in the State. So they're
5 declaring under penalty of perjury that they're in good
6 standing; they either have or will comply with all
7 applicable laws, regulations, permits, licenses, et
8 cetera; and if they have not -- if they are not in
9 compliance at that time, then they're attesting that they
10 have started the compliance process and they have provided
11 some detailed information about that to us for those ones
12 that are not possible to get it in advance.

13 --o0o--

14 ASSISTANT DIRECTOR PACKARD: Again, the public
15 entity certification, the only difference is that it
16 doesn't have the language about in good standing and
17 qualified to do business in the State.

18 So that's the language that they would be
19 certifying to. I'm sorry, I'm getting a little ahead of
20 myself here. Too many slides.

21 Okay. So Issue 1, Option 2, Part 2, is after the
22 award. And this is the provision that will help those
23 applicants that can't get certain permits and licenses
24 until they've either started the project or completed the
25 project.

1 So after the award, payment of funds or approval
2 of the costs is tied to submission of an updated
3 compliance certification. So one of the things that the
4 grant manager does as they're managing the grant is
5 they're taking a look to make sure that the grantee is
6 doing everything they're supposed to be doing.

7 And this would be another thing: They would be
8 reviewing the submission of updated compliance for those
9 grant projects where permits and licenses have to be
10 obtained later on in the process.

11 And their certification language is almost
12 exactly the same as the language that you just looked at.
13 Very minor difference.

14 --o0o--

15 ASSISTANT DIRECTOR PACKARD: For this option,
16 Issue 1, Option 2, the pros are that it's realistic --
17 utilizing this process realistically acknowledges that
18 some of the permits and licenses can't be obtained.

19 It wouldn't eliminate applicants who haven't the
20 time -- or who have not had the time to obtain all their
21 permits and licenses before they apply.

22 The proposed grantees would have the assurance of
23 a grant before they incur the costs of applying and
24 obtaining permits and licenses.

25 And application eligibility would be more

1 inclusive, we hope, thus making the grant process more
2 competitive.

3 --o0o--

4 ASSISTANT DIRECTOR PACKARD: Additional reasons
5 include: This is a proven -- conditionally awarding
6 grants is a proven mechanism for assuring compliance. And
7 we have done this here at the Board with mandated
8 administrative requirements. It wouldn't delay the grant
9 project. And, again, some permits and licenses cannot be
10 issued until the project has started or been completed.

11 Payment of grant funds and approval of costs is
12 dependent upon compliance progress, so the grant manager
13 would be reviewing their progress and reviewing the update
14 on their compliance.

15 --o0o--

16 ASSISTANT DIRECTOR PACKARD: The downside is
17 there's no guarantee that they will receive the required
18 permits and licenses after the award of the grant. They
19 may run into problems, and of course that's something that
20 the Board could deal with afterward.

21 --o0o--

22 ASSISTANT DIRECTOR PACKARD: Yeah, we're at that
23 time. In terms of revoking the grant, there's a lot of
24 options if the grantee is not in compliance throughout the
25 process.

1 I'm going to stop right there -- I know that was
2 kind of complicated -- before we go on to Issue 2, and ask
3 you if you have any questions.

4 CHAIRPERSON MEDINA: Board members, any
5 questions?

6 ASSISTANT DIRECTOR PACKARD: Good. Okay. Maybe
7 it wasn't as complex as I thought.

8 CHAIRPERSON MEDINA: I did have one question in
9 regard to the contractors. I think it would be helpful to
10 the Board if Board Members were given the list of the
11 unreliable contractors.

12 DEPUTY DIRECTOR JORDAN: There currently isn't
13 anyone on that list.

14 CHAIRPERSON MEDINA: Pardon me?

15 DEPUTY DIRECTOR JORDAN: There currently is not
16 anyone on that list.

17 CHAIRPERSON MEDINA: Oh, there is not?

18 DEPUTY DIRECTOR JORDAN: There is not.

19 CHAIRPERSON MEDINA: Okay. Then that's
20 information that we should have also, if there is no one
21 on that list.

22 Thank you.

23 COMMITTEE MEMBER PAPARIAN: Just to follow-up.

24 Is there such a list more generally in State
25 government? Are there contractors that State agencies are

1 not supposed to do business with or --

2 DEPUTY DIRECTOR JORDAN: With regards to
3 contractors -- and I would suppose that maybe a grantee
4 could be a contractor in some instances -- the Department
5 of General Services maintains a list of contractors that
6 all State agencies go through where information has been
7 provided to the Department of General Services regarding
8 noncompliance or not fulfilling the project, you know,
9 with appropriation or whatever.

10 COMMITTEE MEMBER PAPARIAN: Okay. I guess the
11 Water Board also has a list of people State agencies are
12 not supposed to do business with, based on water
13 violations. Which is unlikely, but possible, to -- that's
14 possible that might overlap at some point with one of our
15 grantees.

16 Okay. Thanks.

17 ASSISTANT DIRECTOR PACKARD: Thank you.

18 STAFF COUNSEL CARTER: Excuse me, Mr. Chair.
19 Marie Carter, Staff Counsel.

20 CHAIRPERSON MEDINA: Yes.

21 STAFF COUNSEL CARTER: I just wanted to make sure
22 that the Board was aware.

23 Under issue One, Option 2, this option would be
24 available to applicants who have not received all permits
25 and licenses, even those that can be obtained prior to

1 receiving the grant funds. It's not just limited to the
2 issue that Ms. Moulton-Patterson raised. It's not limited
3 solely to those that can only be obtained after the
4 project has been commenced. It would apply to any permit
5 and license.

6 ASSISTANT DIRECTOR PACKARD: And that's to
7 provide flexibility in the event that, you know, a local
8 permit -- you know, we don't have any control and they
9 don't have any control over local processes, et cetera.
10 So it's to provide flexibility to the Board to allow them
11 to continue through the process.

12 STAFF COUNSEL CARTER: The safety mechanism is
13 built-in in the certification under penalty of perjury.
14 That's where we get our protection.

15 ASSISTANT DIRECTOR PACKARD: And that's what
16 we're going to discuss under Issue 2.

17 COMMITTEE MEMBER MOULTON-PATTERSON: Just for
18 clarification, Mr. Chair.

19 You know, I understand the flexibility and all of
20 that. But I'm a little concerned, if they're just signing
21 something, you know, under penalty of perjury -- I mean,
22 you know, can we be assured that there's going to be
23 follow-up, you know, on these permits? You know what I'm
24 saying?

25 ASSISTANT DIRECTOR PACKARD: I think what we're

1 going to talk a little bit about in Issue 2 is whether
2 it's appropriate for the Board to be reviewing the permits
3 and licenses that are issued by other agencies, whether we
4 have the staff and the expertise to do that; and if we
5 review them with limited expertise and knowledge of what
6 those permit and license requirements are that are issued
7 by other agencies, et cetera, what kind of liability that
8 poses for the Board if we're approving them and somebody's
9 relying on that and there's something wrong with it.

10 So we're going to talk a little bit about whether
11 we feel actually requiring all the permits and licenses
12 and reviewing them for compliance is appropriate for the
13 Board, or whether we should be relying on the
14 certification of compliance under penalty of perjury, how
15 strong that is, and what option works best for the Board.

16 So it is -- you know, there's pros and cons on
17 each side on how we approach that. And that's why we're
18 here before you today.

19 COMMITTEE MEMBER MOULTON-PATTERSON: Well, I just
20 wanted to be clear that, you know, I for one -- you know,
21 I understand staff problems and, you know, the lack there
22 of and so forth. But when we're giving out this amount of
23 money and we're not, you know, at least following up to
24 see that they got it, that they did get the permits, I
25 think -- I think it's really important. And I think some

1 people are very -- you know, when that kind of money is
2 being given, you know, they might be eager to sign
3 something even if there is a penalty of perjury. And I
4 think that there has to be -- we need to dedicate some
5 staff resources to some sort of follow up.

6 ASSISTANT DIRECTOR PACKARD: Just let me clarify
7 one thing, and maybe this addresses your concern. And
8 maybe you're thinking we should go over it further. But
9 the reason that we talked a little bit about what the
10 grant manager does is because the grant manager is going
11 along with a grantee every step of the way, checking to
12 make sure that they're doing what they're supposed to be
13 doing, that they have what they need to have, the critical
14 licenses and permits.

15 The difference is we don't require them to submit
16 all of those licenses and permits in advance and we don't
17 verify and check each one to make sure that all those
18 requirements have been met that are established by other
19 local, state agencies, whoever the permits and licenses
20 are for.

21 There are critical permits and licenses in
22 certain grants that we do request and we do review. So
23 what we're proposing is that we continue -- where there is
24 a critical grant or license, that we continue in certain
25 programs to do that. And for others, for example, a

1 conditional use permit or some of the other local things,
2 we're not proposing that we obtain copies of all of those
3 and review all of those in advance or even throughout the
4 process.

5 So it's the responsibility of the grant manager
6 to review every step of the way, to make sure that the
7 grantee is in compliance with what they need to be in
8 compliance with.

9 COMMITTEE MEMBER MOULTON-PATTERSON: You know, I
10 understand that fully. But we're the ones that will be
11 criticized by the Legislature and so forth, you know, if
12 this becomes a problem again. And so I guess the
13 assurances that somebody is following up, you know, to a
14 degree the Board's comfortable with is very important to
15 me.

16 ASSISTANT DIRECTOR PACKARD: Okay. Well, let me
17 -- go ahead.

18 STAFF COUNSEL CARTER: Additionally, to put this
19 into perspective of how similar issues are handled in the
20 private sector. For commercial lenders they do not
21 typically request documentation. All they request is a
22 verification, a certification. So, too, that would show
23 the fiscal responsibility is being recognized in the
24 certification under penalty of perjury, because that would
25 raise not only civil but also criminal sanctions. And

1 that is not always required in commercial lending
2 settings. So we're taking one step further and is
3 required by a lot of banks and institutions when they
4 issue loans.

5 COMMITTEE MEMBER MOULTON-PATTERSON: You know, I
6 understand that, Ms. Carter. But I think with public
7 money we need to even go further. That's just the way I
8 feel, especially in today's climate. So I just want to
9 make sure that, you know, we, as the ones that will be on
10 the firing line, so to speak, have assurances that that's
11 being done. And I don't know if my colleagues agree with
12 me, but that's the way I feel.

13 CHAIRPERSON MEDINA: Well, I think that you're
14 absolutely right, and that's why it's very good that this
15 particular item happens to come before us now. It's
16 something that we're very focused on at this time. I
17 think that staff has put something together very good for
18 us to consider. And I know that we're going to get into
19 further discussion when this goes before the full Board.
20 And so, again, this is a very good subject for us to take
21 up at this time, and we're going to continue to work on
22 this because we do feel very responsible for the way in
23 which we handle the State's money.

24 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
25 Excuse me, Mr. Medina. If I could offer some information

1 that might help with this discussion.

2 Martha Gildart with the Special Waste Division,
3 one of the program managers who has the grants that have
4 been requiring permits through a sort of penalty of
5 perjury -- they're not so clearly stated -- process.

6 We have, you know, clearly, reports that are
7 required to be submitted by each of our grantees.
8 Currently, my staff manages something like 300 active
9 grants, just to let you know the range and breadth of the
10 program. And those grantees are all required to submit
11 quarterly reports on their progress in complying with the,
12 you know, terms of the grant and what they propose to do.

13 What we look for -- and, you know, we've used the
14 air quality permit as one of the examples already -- is
15 what kind of progress they're making, you know, what kind
16 of communication they've had with the local air district,
17 you know, have they received that or are they in the
18 process. And we can measure that through the two-year
19 life of the grant itself.

20 One of the things I'd like to make a distinction
21 here is the possession or being in the process of
22 obtaining a permit or license versus compliance. And I
23 think we're sort of confusing those two issues. What we
24 try to verify is that they either have or are in the
25 process of getting those permits and licenses. What we

1 don't particularly pursue and I would say is beyond really
2 the authority of this agency is whether or not they're in
3 full compliance with those permits and licenses.

4 Our assumption is that that local entity who
5 gives that permit will be doing the verification on the
6 compliance; and that if there is a problem, then we will
7 be notified. But we're not the ones who are going to be
8 requiring them to submit the actual emissions data from
9 their facility to see if they're in compliance with the
10 terms of their permit. We look to see, did they get that
11 permit?

12 COMMITTEE MEMBER MOULTON-PATTERSON: Ms. Gildart,
13 coming from local government, I'm not suggesting that we
14 take over local government's position in the compliance.
15 I just want to make sure that they are following up on
16 what they said they were going to do. I'm not saying that
17 we go out and, you know, take over local government's
18 permits. I just want to know that they've gotten them,
19 and that's all.

20 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
21 Right, obtaining as opposed to complying with all the
22 terms and conditions within those permits. That's, I
23 think, where we're a little leery that we don't have that
24 enforcement authority to see that they have indeed
25 complied with all those various little, you know, fuel

1 field rates and emission rates and they've balanced this,
2 that and the other thing for the air district permit.
3 We're looking to see that they do have those permits.

4 And as I said, it may be a progression through
5 the terms of the grant, that over that one or two year
6 period they will have obtained them.

7 CHAIRPERSON MEDINA: Well, I'll take one more
8 comment on this from Board Member Paparian. Then we'll
9 move forward with the rest of the presentation.

10 COMMITTEE MEMBER PAPARIAN: Yeah, I just wanted
11 to -- it may be beyond the scope today, but I think it may
12 be worth looking at at some point, at the issue of whether
13 somebody is facing an enforcement action or compliance
14 issue. When we give out a quarter million dollars to
15 somebody -- I realize the trickiness that Ms. Gildart is
16 talking about, but I wouldn't want to be giving out a
17 quarter million dollars to somebody who's facing an
18 enforcement action for violations of a permit for, you
19 know, water or air discharges. Again, I realize that's
20 not a subject for this immediate discussion. But I think
21 it's worth pondering how we might approach dealing with
22 the issue.

23 CHAIRPERSON MEDINA: Okay. Thank you.

24 If we can proceed with the rest of the
25 presentation.

1 ASSISTANT DIRECTOR PACKARD: Okay. And some of
2 these next slides we've already talked about -- a little
3 bit about some of these points.

4 Issue 2, Option 1, certification of compliance
5 made under penalty of perjury proposes -- this option
6 presents us that certification of compliance made under
7 penalty of perjury is sufficient verification.

8 --o0o--

9 ASSISTANT DIRECTOR PACKARD: The pros are: That
10 falsification under penalty of perjury can result in
11 criminal and civil penalties.

12 Certification under penalty of perjury is widely
13 used by the State, often as a direct consequence of
14 legislative mandates. So there are many programs
15 established by the Legislature that specifically direct
16 that compliance with other permits and licenses be done
17 through certification.

18 Self-certification places the burden of ensuring
19 compliance on the applicant instead of the Board.

20 Self-certification eliminates potential claims by
21 the applicant or the grantee or third parties that they
22 relied on the Board's verification of the sufficiency and
23 completeness of compliance.

24 Where verification was required, with one
25 exception, the survey -- and we did do a survey of some

1 State agencies -- other State agencies to determine how
2 they handle this particular issue. And the survey of
3 State agencies exclusively used self-certification for
4 verification, as we are proposing to do.

5 And self-certification would not substantially
6 increase staff's workload.

7 --o0o--

8 ASSISTANT DIRECTOR PACKARD: The cons to this
9 option are: That the Board is not, under this option,
10 independently verifying compliance with the other -- with
11 all of the permits and licenses. They're relying on the
12 other agencies to verify compliance.

13 Applicants and grantees arguably could be less
14 scrupulous in their compliance if we are utilizing a
15 certification rather than verifying compliance ourselves.

16 To those who are unfamiliar with the criminal and
17 civil penalties associated with falsification under
18 penalty of perjury, this verification method may appear
19 inadequate.

20 --o0o--

21 ASSISTANT DIRECTOR PACKARD: And we'll go on to
22 Option 2, which is: In all cases, documentation
23 evidencing certification should be submitted to the Board
24 for verification.

25 --o0o--

1 ASSISTANT DIRECTOR PACKARD: This means that we
2 would be requiring documentation of the grantees and
3 applicants showing that they are in compliance --
4 documentation of the permits and licenses and verifying
5 compliance with them. The Board would be verifying
6 compliance.

7 --o0o--

8 ASSISTANT DIRECTOR PACKARD: The pros are that
9 this could encourage applicants and proposed grantees to
10 be more scrupulous in meeting permit and license
11 requirements.

12 --o0o--

13 The cons are: This method of verification is, we
14 believe, beyond the Board's regulatory responsibilities,
15 beyond our level of expertise and unnecessarily duplicates
16 the work required of the other regulatory agencies issuing
17 the permits and licenses.

18 If the Board imposes an affirmative duty on
19 itself to verify compliance, this may subject the Board to
20 liability. Independent Board verification would
21 substantially increase staff's workload.

22 --o0o--

23 ASSISTANT DIRECTOR PACKARD: So those are the
24 options that we wanted to discuss under these issues.

25 The options for the Board here are to approve the

1 staff recommendations to address Issues 1 and 2; or
2 approve another option identified by staff in this item;
3 or disapprove the staff recommendations and provide
4 additional direction to staff.

5 Staff recommendation are as follows.

6 Option 2 under Issue 1: Staff recommend that we
7 make a verification of compliance a condition of the grant
8 award, and provide for after-award compliance.

9 For Issue 2: Staff recommendation Option 1,
10 which is that certification of compliance made under
11 penalty of perjury is sufficient verification for our
12 grant programs.

13 That concludes my presentation. And, of course,
14 we're all here to answer any additional questions.

15 CHAIRPERSON MEDINA: Thank you.

16 Board members, any questions?

17 And we do have one speaker after Board Member
18 questions.

19 COMMITTEE MEMBER MOULTON-PATTERSON: I don't have
20 any questions. I just think that this is something that
21 should be discussed by the full Board, and I wouldn't want
22 it on consent.

23 CHAIRPERSON MEDINA: Thank you.

24 Mr. Paparian?

25 Okay. We do have one speaker, Mr. John Cups.

1 And if you would happen to tell us how you
2 injured yourself.

3 MR. CUPS: Well, Unfortunately -- I mean the
4 story's not very exciting. I was walking my dog and
5 slipped on some wet grass and broke my leg.

6 CHAIRPERSON MEDINA: You have our sympathies and
7 we hope you recover quickly.

8 MR. CUPS: Well, I'm sure that I will. Thank you
9 very much.

10 I just kind of wanted to follow-up on the issue
11 that both Ms. Gildart and Mr. Paparian raised relative to
12 compliance and the distinction between whether or not an
13 operator has the required permits versus are they actually
14 in compliance with those permits.

15 And I don't necessarily have any strong feelings
16 one way or the other about how you proceed on that. But I
17 think the issue is really articulated by Mr. Paparian as a
18 very important one, particularly at least with respect to
19 the Board's own permits and licenses.

20 You even -- you know, the practical reality is
21 that the best-run facility will from time to time find
22 itself in violation of one or more of the Board's
23 requirements. And normally those situations are resolved
24 in a relatively quick temperament. In some instances,
25 particularly when you get into gas violations, it may take

1 a little bit more time.

2 And I guess the question -- a question that I
3 think you need to address as part of this discussion is
4 whether or not violation of at least -- violation of
5 permit conditions of at least the Board's own permits, how
6 does that fall into this whole compliance verification
7 issue? Particularly when you get to the point of
8 requiring an applicant to certify under penalty of perjury
9 that not only are they in compliance at the present time,
10 but also in effect guarantee that they will be in the
11 future.

12 That depending on whether or not it applies to
13 violations I think becomes a significant obstacle to many
14 folks who would be interested in grants from the Board,
15 because, in effect, you would be asking them to guarantee
16 that not only do they have the permit, they're in
17 compliance with it today, but they will also be in
18 compliance at least through the period of the grant.

19 And I think unless you thoroughly evaluate,
20 discuss and address those kinds of issues, you're going to
21 create a lot of uncertainty and grief in this process that
22 will work to the detriment of your whole grants program.

23 So I just want to lay that out for you.

24 Thank you very much.

25 CHAIRPERSON MEDINA: Thank you, Mr. Cups.

1 Any further discussion?

2 Board members, your preference in this item?

3 ASSISTANT DIRECTOR PACKARD: Could I make a
4 clarification?

5 It's my understanding that we do verify our own
6 permits. What we're talking about here is external
7 permits and licenses that are required -- a grantee would
8 be required to get from other agencies, not our own. We
9 do verify those.

10 CHAIRPERSON MEDINA: Okay. Thank you.

11 Board members, any recommendations on this?

12 COMMITTEE MEMBER MOULTON-PATTERSON: I've already
13 stated my recommendation that it go to the full Board.

14 CHAIRPERSON MEDINA: Very good.

15 Mr. Cups, sorry to --

16 MR. CUPS: Well, I guess I would seek
17 clarification then from staff. Is it their intent that
18 if, for example -- I mean, I can think of a couple of
19 different examples. I know of a fairly large significant
20 public institution that operates a number of permitted
21 facilities that actually received a grant from this Board
22 to actually do such things as sponsor some workshops on
23 environmental justice. Now, I'm not aware of any current
24 violations of their permit conditions. But given the fact
25 that they operate a number of landfills, I suspect if you

1 check the record there might have been a violation of one
2 of their permits at some point down the road -- I mean in
3 the past year or there may be in the future. And I guess
4 the question is: Under those circumstances, if they had
5 been required to sign under penalty of perjury that they
6 were in compliance and would be in compliance, would they
7 then find themselves in effect having committed perjury?

8 Those are the kinds of questions that I think you
9 need to think through very carefully about, you know, how
10 this whole process is going to work and whether -- you
11 know, when you say verification, is it verification just
12 that they have the permit or is it verification not only
13 that they are currently not in violation of that permit,
14 but that, in fact, they have no violation that occurs
15 throughout the temperament?

16 CHAIRPERSON MEDINA: Thank you, Mr. Cups.

17 The Board is now moving on this item. And you
18 will have another opportunity at the Board meeting itself
19 and before the Board meeting.

20 COMMITTEE MEMBER PAPARIAN: Mr. Chair, can I ask
21 a question of staff?

22 CHAIRPERSON MEDINA: Yes.

23 Board Member Paparian.

24 COMMITTEE MEMBER PAPARIAN: I know that on some
25 of our grants we -- I'm trying to think of the examples --

1 I saw on our grants to local governments for various
2 things, we randomly audit those grants, right?

3 DEPUTY DIRECTOR JORDAN: That's accurate.

4 COMMITTEE MEMBER PAPARIAN: If we had one of
5 these provisions, would we be randomly auditing a grantee
6 to assure their adherence to -- let's see, how should I
7 put it? If we give a grant to somebody who's a private
8 entity, do we randomly audit those as well?

9 DEPUTY DIRECTOR JORDAN: Yes, we do. However,
10 the audits that we currently perform are fiscally related.

11 COMMITTEE MEMBER PAPARIAN: So as part of that
12 audit, we would not check the compliance issues?

13 DEPUTY DIRECTOR JORDAN: Not unless we change the
14 terms of the contract with the Department of Finance, who
15 does these audits.

16 And we could do that. It would require obviously
17 additional steps for them on what they currently do. So
18 there would probably be an increase in the contract
19 amount.

20 COMMITTEE MEMBER PAPARIAN: And those are not
21 audits of every -- that's some proportion?

22 DEPUTY DIRECTOR JORDAN: Yes, there's a
23 percentage. We don't audit every single grant for a
24 cycle. We do a percentage and we do random.

25 COMMITTEE MEMBER PAPARIAN: Yeah, that might be

1 something to consider if we move forward with the staff
2 recommendation. It might be to include in that random
3 audit some provision for verifying the certification.

4 ASSISTANT DIRECTOR PACKARD: That sounds like
5 something we could discuss, again with the distinction
6 between verifying that they have the permit and verifying
7 that they're in compliance with all the terms and
8 conditions of a permit issued by some other regulatory
9 agency.

10 CHAIRPERSON MEDINA: Okay. Thank you.

11 With that if -- we just want to move this to the
12 full Board for a discussion then --

13 COMMITTEE MEMBER MOULTON-PATTERSON: I do.

14 -- without a recommendation?

15 We do have a resolution before us.

16 What is the best procedure? Is this to move the
17 resolution forward without placing it on consent?

18 STAFF COUNSEL CARTER: Yes, I would --

19 CHAIRPERSON MEDINA: If we could have such a
20 motion then to move it before the Board without it going
21 on consent.

22 COMMITTEE MEMBER MOULTON-PATTERSON: I'll move
23 that it go forth with full discussion of the full Board.

24 CHAIRPERSON MEDINA: Okay.

25 COMMITTEE MEMBER MOULTON-PATTERSON: You know, I

1 think we're -- just from my perspective, I think we're on
2 the right track, but I still want to make sure.

3 Because don't you have to submit a report to the
4 Legislature?

5 EXECUTIVE DIRECTOR LEARY: Yes, I do Madam Chair.

6 But --

7 COMMITTEE MEMBER MOULTON-PATTERSON: Yeah. So I
8 just really want to make sure from my perspective. But,
9 you know, I think you certainly have addressed issues. So
10 I think we just move it forward.

11 EXECUTIVE DIRECTOR LEARY: Chairman Medina, I
12 don't know that you need to take any action with the
13 resolution. If you're going to move it to the full Board
14 for their discussion and consideration, I don't know that
15 you need to take any action with the resolution. Just --

16 CHAIRPERSON MEDINA: Okay. This item will then
17 be moved to the full Board for discussion, consideration
18 and a vote.

19 I want to thank the staff for their preparation,
20 all the work that they have done. This is a very
21 important matter for the full Board.

22 And with that, we'll move on to the next item.

23 DEPUTY DIRECTOR JORDAN: Yes. Item E, or Agenda
24 Item 54, discussion of the California Integrated Waste
25 Management Board's Grant Programs.

1 It will be presented by Roger Ikemoto of the
2 Administration and Finance Division.

3 MR. IKEMOTO: Good morning, Mr. Chair and
4 Committee Members. I'm Roger Ikemoto of the
5 Administration and Finance Division, here to present Item
6 Number E, Board Agenda Item Number 54, discussion of the
7 California Integrated Waste Management Board's Grants
8 Programs.

9 The purpose of this discussion item is to provide
10 information to the Board about the Board's Grant Programs.
11 This item contains six attachments.

12 The first attachment is a generic grant's life
13 cycle. This is a chart developed by the Grants
14 Administration Unit to show the general life cycle of a
15 grant from funding allocation through the closure of the
16 grant.

17 Attachments 2 and 3. Attachment 2 is a grant
18 funding award. Attachment 3 is a cycle summary.

19 These charts illustrate for the period 1996
20 through 2001, by fiscal year, the grants awarded by fund,
21 term date, maximum award amount of the grantee, and the
22 number of grants awarded for each grant cycle.

23 Attachment 4, the cycle scoring criteria, is a
24 chart giving a one-year overview of the signed points and
25 percentages for each general review criteria and program

1 criteria approved by the Board.

2 Attachment 5 is the regulatory and statutory
3 funding requirements. This is a chart showing an overview
4 of the regulatory and statutory funding requirements for
5 each grant program.

6 And, finally, Attachment 6 is a history of the
7 program criteria for the Household Hazardous Waste Grant
8 Program. This is a chart illustrating the history of the
9 grant criteria -- program criteria used by the Household
10 Hazardous Waste Grant Program for Fiscal Years 1991 -- or
11 '90-'91 through 2001-2002.

12 Do you have any questions or do you have any --
13 would you like to talk about any of the -- discuss any of
14 the attachments presented? Otherwise, this will conclude
15 my presentation.

16 CHAIRPERSON MEDINA: Okay. Thank you.

17 Board members, any questions?

18 Any questions, Mr. Paparian?

19 With that, we'll move on to the next item.

20 DEPUTY DIRECTOR JORDAN: Yes, the next item will
21 also be presented by Roger Ikemoto.

22 MR. IKEMOTO: Mr. Chair and Committee Members,
23 I'm also here to present Item Number F, Agenda Item Number
24 55, consideration of options for modification to current
25 policy on grant scoring criteria and evaluation process.

1 The purpose of this item is to address the
2 proposed modifications to the grant scoring criteria and
3 evaluation process, based on discussions at the March 2002
4 Board meeting in El Centro.

5 This item presents six modifications of the
6 current policy to the grant scoring criteria and
7 evaluation process.

8 Points 1, 2 and 3 have to deal with the revised
9 scoring criteria.

10 Staff is recommending: 1) Modifying the scoring
11 criteria to eliminate the overlap of some scoring
12 categories.

13 The general scoring criteria categories, along
14 with definitions and statements, should appear on all
15 scoring criteria brought forward to the Board for
16 approval. However, the bulleted points appearing under
17 each general scoring criteria category are suggested
18 points that may be addressed by each grant applicant.

19 Program staff and the Board should retain the
20 right to keep the suggested bulleted points as they appear
21 on Attachment 3, to modify the points -- the bulleted
22 points, and/or to add to the bulleted points as necessary.

23 2) Clarifying the scoring criteria to allow
24 program staff and Board members the ability to tailor the
25 scoring criteria to a particular grant program.

1 And, 3) Simplify the application efforts to
2 apply -- or applicants' efforts to apply for a grant.

3 To clarify and simplify the scoring criteria, we
4 have revised the previous objectives and methodology
5 categories into a new goals and objectives category and a
6 workplan category.

7 The fourth point of this item, zero to maximum
8 points available. Staff is recommending standardizing the
9 direction of all grant programs to award points from zero
10 to the maximum points available for each scoring criteria.
11 Currently, each program provides guidelines to panels to
12 ensure scoring consistency. However, some grants require
13 a minimum score be given in some scoring criteria -- or
14 categories even if no -- even if not addressed by the
15 applicant.

16 The fifth point, evidence of a recycled content
17 purchasing policy or directive.

18 Staff is recommending that the minimum percentage
19 be reduced from 15 percent to 10 percent of the points
20 available to determine eligibility. Hence, program staff
21 would retain the option of increasing the required
22 percentage if they so desire.

23 Point six, staff members to score grants. Staff
24 is recommending keeping the scoring panels at three
25 members per panel.

1 MR. IKEMOTO: Program staff and/or Board could
2 recommend that a fourth member be used to score grants if
3 the grant warrants such consideration.

4 Program staff will recommend the number of
5 scoring panel members intended to be used at the time the
6 scoring evaluation -- scoring criteria and evaluation
7 process is approved by the Board.

8 Do you have any questions or would you like to
9 discuss any of the topics presented? Otherwise, this will
10 just conclude my presentation.

11 CHAIRPERSON MEDINA: Board members, any
12 questions?

13 COMMITTEE MEMBER MOULTON-PATTERSON: Good report.

14 CHAIRPERSON MEDINA: No.

15 Very good report. Thank you.

16 DEPUTY DIRECTOR JORDAN: This particular Item 55,
17 or F on our agenda, is a consideration item and does also
18 have a resolution.

19 CHAIRPERSON MEDINA: Correct. I'm looking at it
20 now.

21 DEPUTY DIRECTOR JORDAN: Thank you.

22 CHAIRPERSON MEDINA: Can we have a motion on
23 Resolution 2002-347?

24 COMMITTEE MEMBER PAPARIAN: Mr. Chair, I think
25 the issue here is the question of the recycled content

1 purchasing policy. And a suggestion that I have would be
2 to keep the 15-percent green procurement requirement, but
3 allow some flexibility in determining -- make it a range
4 rather than a set point score. And I think that would
5 address what I heard from Senator Roberti and Mr. Jones
6 with regards to the scoring that they were involved in and
7 their concerns about how the recycled content policy was
8 carried out.

9 So my suggestion would be to keep it at 15
10 percent; but allow it to be a range from zero to 15, to be
11 judged by the scoring panel.

12 MS. WILLD-WAGNER: Mr. Paparian, I believe--
13 This is Shirley Willd-Wagner of the Special Waste
14 Division.

15 There is already a range. I'm not sure if that's
16 what you're asking. But within that 15 points -- say, if
17 it's 15 points out of 100 points, within the 15 there are
18 a certain number of points given for like four various
19 components of a recycled content procurement policy.
20 Number one, do they have a policy? Number two, has the
21 policy been implemented, I think, and is there evidence of
22 specific recycled content purchasing that has been done by
23 the agency -- or the applicant, I should say? And also
24 there's a specific point limit for other sustainable
25 practices, such as grass cycling and -- I don't have that

1 in front of me. But there are four separate categories
2 that we do score within that 15 percent currently, so that
3 you can give various points. It's not an all or nothing.

4 I'm not sure if that's what you're asking or not.

5 COMMITTEE MEMBER PAPARIAN: Somehow I had the
6 impression from Senator Roberti that he felt it was in the
7 context of the grant that he was involved in scoring. If
8 it wasn't, that's interesting. But I think it still --

9 MS. WILLD-WAGNER: It may have changed with
10 different --

11 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
12 We've got two different approaches here sort of crossing
13 each other.

14 I think what Shirley is describing is out of
15 however many points are set aside for this criteria, and
16 they can distribute them as a range; it's not an all or
17 nothing, zero or 15.

18 I think the point of the item is what should that
19 score be total, the maximum? Should it always continue to
20 be 15 percent of the total score available or should we
21 reduce that total to 10 percent or something in between?
22 And then once that's set, we can still award, you know,
23 zero to 10, zero to 15 points on the different components
24 that make up a green procurement policy.

25 So that the two things that we're crossing here

1 is: Do we want to have a policy on what that maximum
2 number of points should be set at versus can you award
3 some intermediary level of points based on how well
4 they've complied, not just zero and max, but anything in
5 between?

6 COMMITTEE MEMBER PAPARIAN: If I understand what
7 you're saying, I think that's what I'm getting at.

8 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
9 So you're trying to go for the idea that you would score a
10 portion of whatever that total was set at?

11 COMMITTEE MEMBER PAPARIAN: Right. You could get
12 a maximum of 15, say. But you might get 8, you might get
13 10, you might get 15.

14 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
15 The problem we're trying to deal with and the
16 recommendation on this component is that 15 percent of the
17 total grant points available can often make or break an
18 application where the ability to purchase recycled content
19 products is a very minor part of that grant activity.

20 An example we use are in waste tire cleanups or
21 the farm and ranch cleanups where there is not much
22 purchasing occurring. And yet to still hang 15 percent of
23 the points on that policy could actually be counter to the
24 Board's wishes in conducting a cleanup.

25 So the item here is trying to give us more

1 flexibility in the program by possibly reducing that
2 maximum number of points available, not just how they're
3 awarded from zero to 15 for different pieces of it.

4 COMMITTEE MEMBER PAPARIAN: Yeah. The situation
5 where we have, as we do with some cases, oversubscription
6 of available money, I think it is an important component.
7 Basically, we're sending the clear message that if
8 somebody is actively involved in green procurement, they
9 do have a better chance of getting the funds that might be
10 available.

11 But, Mr. Chairman, I'm wondering, since Senator
12 Roberti -- I know Senator Roberti and Mr. Jones both had
13 an active interest in this item. It was expressed when we
14 were down in El Centro. I mean, on one level I'd like to
15 resolve this and make a recommendation, but on another
16 level I think that we might benefit from their input and
17 experience here, especially since I think it's being
18 brought forward at their request basically. So I wonder
19 if we might just move this along to the full Board and
20 have a discussion at the full Board.

21 CHAIRPERSON MEDINA: I would agree with you, that
22 we do need to have full Board discussion on this item.
23 From previous Board meetings I know that when we have
24 resolutions, even though they're going to require full
25 Board consideration, that we've moved the resolution

1 forward, not placed it on consent, for Board discussion.
2 Otherwise, it will wind up not taking any action and
3 resolutions and just sending everything on for Board
4 discussion.

5 Did you have one more comment?

6 MR. IKEMOTO: Yes. Roger Ikemoto.

7 Mr. Paparian, as Martha Gildart said, when we
8 interviewed Senator Roberti and Board Member Jones about
9 their feelings about this scoring criteria, what they felt
10 was that the scoring criteria should -- the points should
11 be -- they should be allowed to score anywhere from zero
12 to -- if the points available was 100 points, they should
13 be able to give anywhere from zero to 15 points.

14 What they felt was that 15 points out of a total
15 of 100 points, so 85 percent, would just be available for
16 the other parts of the scoring criteria. They felt that
17 that weighed too much -- the recycled content was too
18 heavy. So they felt that if they could lower that down to
19 10 percent of the available points, so 10 points, they
20 would be able to score from zero to 10 points -- anywhere
21 in between zero to 10, but also it would give 90 percent
22 of the weight to the other elements of the scoring
23 criteria, both program and general scoring criteria. So
24 that's what they were kind of -- their feelings about how
25 this would work.

1 CHAIRPERSON MEDINA: Thank you. And I'm sure
2 we'll have an opportunity to hear from both Board members
3 at our Board meeting next week.

4 So if I could have a motion on this to move this
5 to the Board meeting, and not on consensus, but certainly
6 for Board discussion.

7 COMMITTEE MEMBER MOULTON-PATTERSON: So moved.

8 CHAIRPERSON MEDINA: And I will second this.

9 And if we could have role call to Resolution
10 2002-347.

11 SECRETARY HARRIS: Moulton-Patterson?

12 COMMITTEE MEMBER MOULTON-PATTERSON: Aye.

13 SECRETARY HARRIS: Paparian?

14 COMMITTEE MEMBER PAPARIAN: Just to clarify.

15 We're moving this without a recommendation on the
16 resolution, right?

17 CHAIRPERSON MEDINA: Yes.

18 COMMITTEE MEMBER PAPARIAN: Okay. Then I would
19 vote aye on that.

20 SECRETARY HARRIS: Medina?

21 CHAIRPERSON MEDINA: And my vote is aye.

22 And this will go before the full Board for
23 discussion.

24 And with that, we're going to take a five-minute
25 break at this point.

1 (Thereupon a brief recess was taken.)

2 CHAIRPERSON MEDINA: Okay. We're reconvened.

3 And if we can proceed with Item H.

4 Mr. Don Dier, are you presenting this item?

5 Who is making the presentation on Item H?

6 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART: I
7 will, Martha Gildart.

8 This is Agenda Item 1 on the board agenda, and I
9 believe it's H, or is it G -- H on this agenda.

10 It's the consideration of award for the Waste
11 Tire Enforcement Grant.

12 CHAIRPERSON MEDINA: Since you mentioned it, Item
13 G was pulled. So that's why we're moving on to Item H.

14 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
15 Okay. Consideration of award for Waste Tire
16 Enforcement Grant to the California District Attorneys
17 Association Circuit Prosecutor Project for Fiscal Year
18 2001-2002.

19 The purpose of this grant is to assist
20 prosecutors in rural counties to investigate and prosecute
21 civil and criminal violations of the laws relating to the
22 storage and transport of waste tires.

23 As has been identified in the five-year plan,
24 there is a need to provide enforcement, training and
25 resources for prosecutors, investigators and regulators in

1 these counties.

2 This grant will fund one new circuit prosecutor
3 specialized in prosecution of waste tire cases. In
4 addition, there will be a support in the form of
5 investigators and other prosecutors.

6 The grant amount for this two-year pilot project
7 is \$325,000 out of the current fiscal year budget.

8 Some of the terms that we will be looking at --
9 the prosecutorial and investigative services will be
10 billed at an hourly rate. And that all the grant funding
11 we provide to this activity will go toward waste tire
12 investigation, prosecution, training and related
13 activities.

14 The grantee will be providing progress reports on
15 a quarterly basis. They will conduct four roundtables per
16 year, two in the north and two in the south; and provide a
17 forum for all stakeholders to discuss various strategies
18 for conducting cases and for conducting waste tire
19 enforcement.

20 At the end of a 12-month period, we will be
21 evaluating the success of the program and determining if
22 any changes need to be made.

23 After much discussion on Monday, the Special
24 Waste and Market Development Committee did move this item
25 to the full Board, but without any specific action.

1 We have someone here from the California District
2 Attorneys Association to answer any questions, as staff
3 are also available.

4 That concludes my presentation at the moment.

5 CHAIRPERSON MEDINA: Okay. Thank you, Ms.
6 Gildart.

7 Board members, any questions or discussion on
8 this item?

9 If not, we will move on.

10 We do have one speaker's slip here.

11 CHIEF COUNSEL TOBIAS: Mr. Medina, can I just
12 clarify something?

13 CHAIRPERSON MEDINA: Certainly.

14 What you've just received, that was passed out to
15 you, is from CDAA, I believe. It says H at the top,
16 consideration of grant. I just wanted to make sure that's
17 not a staff document, that that's the document from CDAA.
18 We are still talking and negotiating with CDAA, and I
19 think the discussions are going quite well. But since
20 this didn't have a title or an attribution on it, I wanted
21 you to know where this particular piece came from.

22 CHAIRPERSON MEDINA: Thank you.

23 Yes.

24 MR. FILTER: Good morning, Mr. Medina. Gale
25 Filter from the California District Attorneys Association.

1 Ms. Moulton-Patterson, Mr. Paparian.

2 I will take full blame for any -- regarding this
3 document.

4 I'd just sort of like a couple minutes of your
5 time and then explain where we've been and where I think
6 we're going to go with this.

7 And as you know, I had the opportunity of meeting
8 you, Mr. Medina, at the airport in San Diego coming back
9 from the Air Resources Board symposium. So you're
10 somewhat familiar with the Circuit Prosecutor Project.
11 You heard Paul Hagen speak about tribal issues at that
12 symposium.

13 I think the best way to understand why the
14 district attorneys want this is just to tell you briefly
15 what my experience is that I bring to the table.

16 For nine years I was a prosecutor in Imperial
17 County. And I was assigned for the last six years to the
18 Serious Felony Unit. In other words, my primary duties
19 were to do three-strike cases as well as death penalty
20 murder cases. That was my job.

21 I also did all the prison cases that came out of
22 the Calipatria and Centinella prisons.

23 I was the only environmental prosecutor in
24 Imperial County. And the only way that I was allowed to
25 do environmental cases is whether I did all of the other

1 cases, and then I was allowed to do the environmental
2 cases.

3 During the time that I was in Imperial County I
4 prosecuted such environmental cases where there was a
5 transportation of hazardous waste -- on two occasions, I
6 did that -- into public landfills in Imperial county.

7 I prosecuted a case in which sludge was taken
8 from Fiesta island in San Diego and diverted to farm lands
9 of Imperial county.

10 I also did a case against a geothermal company
11 which 300,000 geothermal filters containing arsenic were
12 disposed to a public landfill that amounted to more than
13 one million pounds of hazardous waste to a landfill.

14 The reason I bring up those cases is that if I
15 didn't do those on my own, those cases would never have
16 been prosecuted. It was a voluntary basis. And that's
17 how I learned about environmental prosecution. There was
18 no one there to train me. There was no one there to push
19 me to do environmental cases. It was something I took on
20 my own.

21 Subsequent to that, since leaving Imperial
22 county, the task force has for all practical purposes
23 died, and there has been little in terms of environmental
24 prosecution in that particular county.

25 I was also interested at the beginning of this

1 Committee meeting today where there was a discussion about
2 environmental justice. As you know, two of our circuit
3 prosecutors were involved in the Westley tire fire.
4 Perhaps what you don't know is that some of the members
5 that were -- some of the community members from the
6 Westley tire fire last year testified before a Senate
7 Committee regarding the impact that the Westley tire fire
8 had on the town of Westley.

9 Westley, for your information, is comprised of 90
10 percent Hispanic. And the one thing that became clear
11 during those Committee hearings was that there is nothing
12 that promotes environmental justice as much as
13 enforcement. And that's what the Circuit Prosecutor
14 Project does. You don't have environmental justice unless
15 you have enforcement, period. That's what we work on;
16 that's how we operate.

17 This document that's in front of you basically, I
18 believe, reflects some of the changes that Mr. Paparian
19 heard on Monday. One of the things is that we've moved it
20 to an hourly rate. The hourly rates are in there. I
21 think that they're reasonable. I think that they're just.
22 More importantly from the Waste Management Board's
23 perspective, they certainly do provide accountability.

24 The training -- I have since Monday talked to
25 some of our people. And what I will do is that I had an

1 offer from the people in Los Angeles, the district
2 attorneys there, to put on a waste tire workshop in that
3 area, at our expense, and not the waste tire. We work off
4 of education. You can't learn how to prosecute cases
5 unless you understand what the particular laws are
6 involving those violations.

7 And I'll tell you the truth, what my experience
8 has been, there is only two or three people who really
9 know anything at all about prosecuting a tire case, and
10 two of those people are in the Circuit Prosecutor Project
11 because they were engaged in the Westley tire fire case
12 and other cases.

13 I think that the proposal before you is a
14 reasonable one. I think that, as Mr. Eaton wanted to know
15 at the time, the previous Committee hearing, does the
16 Waste Management Board get a bang for their buck, and I
17 assure you that you're going to get a lot of bang for your
18 buck because that's what we do.

19 Finally, I think it was Mr. Jones who articulated
20 a concern at the meeting on Monday, saying, you know, you
21 guys seem to go after the big cases and not the little
22 cases. Westley was certainly a sexy case by anyone's
23 standard. We got a lot of PR out of it, and I won't say
24 that we didn't. But on the other hand, if you look at the
25 news release that's on the last part of your materials, we

1 just received an award from the Mountain Lion Foundation.
2 I think it's important that what the award does is it
3 recognizes us for doing cases -- us, the Circuit
4 Prosecutor Project, for doing cases that nobody else
5 wanted to do.

6 And we've had significant impact on poaching in
7 the State of California. We have prosecuted bear poaching
8 cases. We have prosecuted stream-bed alteration cases.
9 And I assure you that -- I make this commitment to you
10 that we will prosecute the tire cases, be it civil or
11 criminal, and we have that access to the D.A. The D.A.s
12 are excited about this. And the people in the Circuit
13 Prosecutor Project are excited about it.

14 If you have any questions, I'll be more than
15 happy to answer them.

16 CHAIRPERSON MEDINA: Members, any questions, any
17 comments?

18 COMMITTEE MEMBER PAPARIAN: Mr. Chair, just -- I
19 was at the Special Waste meeting. And I would never claim
20 to speak for Mr. Eaton or Mr. Jones. But I think that we
21 had a very good discussion of this item. And I think that
22 the general feeling was fairly positive towards this item,
23 although there were some details left to be worked out.
24 And that was why it was being forwarded to the full board
25 without a clear recommendation.

1 CHAIRPERSON MEDINA: Okay. Member

2 Moulton-Patterson.

3 COMMITTEE MEMBER MOULTON-PATTERSON: Just a
4 comment. You know, I certainly agree with the speaker
5 that enforcement is the key to environmental justice. And
6 it's a very important component. So I would certainly be
7 in favor of this.

8 CHAIRPERSON MEDINA: Very good.

9 Thank you, Mr. Filter. And I certainly am much
10 better informed in regard to the CDAA's relationship to
11 the Waste Board and the work that you've done in the past.
12 And it just goes to show that waiting at airports isn't
13 always a waste of time. So thank you.

14 MR. FILTER: Thank you.

15 CHAIRPERSON MEDINA: With that, we will open it
16 up to any public comment before we adjourn for the day.

17 Is there any public comment?

18 If not, this meeting is adjourned.

19 (Thereupon the California Integrated
20 Waste Management Board, Budget and
21 Administration Committee meeting adjourned
22 at 10:50 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board,
7 Budget and Administration Committee meeting was reported
8 in shorthand by me, James F. Peters, a Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 26th day of June, 2002.

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23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
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